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APPLICATION NO		FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,516	_	11/13/2001	Juergen Kaufmann	089467-000000US	4782
20350	7590	07/28/2004		EXAMINER	
		ID TOWNSEND	ROSENBERGER, RICHARD A		
TWO EMBARCADERO CENTER EIGHTH FLOOR				ART UNIT	PAPER NUMBER
SAN FRAI	SAN FRANCISCO, CA 94111-3834				
				DATE MAILED: 07/28/200	4

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)					
	10/054,516	KAUFMANN, JUERGEN					
Office Action Summary	Examiner	Art Unit					
	Richard A Rosenberger	2877					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1) Responsive to communication(s) filed on 05/1	<u>/0/2004</u> .						
2a)⊠ This action is FINAL. 2b)□ This	s action is non-final.						
Disposition of Claims							
5)☐ Claim(s) is/are allowed. 6)☑ Claim(s) <u>1-10</u> is/are rejected. 7)☐ Claim(s) is/are objected to.	4a) Of the above claim(s) is/are withdrawn from consideration. )□ Claim(s) is/are allowed. )□ Claim(s) 1-10 is/are rejected.						
Application Papers							
9) The specification is objected to by the Examine	er.						
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.							
Priority under 35 U.S.C. § 119							
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>							
Attachment(s)							
1) Notice of References Cited (PTO-892)	4) Interview Summary	•					
<ul> <li>2) Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)</li> <li>Paper No(s)/Mail Date</li> </ul>	Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	ate Patent Application (PTO-152)					

Application/Control Number: 10/054,516

Art Unit: 2877

1. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim claims 1-33 of copending Application No. 10/054,116. Although the conflicting claims are not identical, they are not patentably distinct from each other because the three applications are all directed to the same general invention, a gas permeable probe. It is unclear what the distinctions among the claimed subject matter in these three applications is intended to be. The same subject matter appears to be claimed in various degrees across the applications. This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 appears to have some language missing, which renders the claim unclear. The last paragraph of the claim states that there is "an intermediate space being formed between said support tube .." without setting forth the other structure which the intermediate space is between. Thus the intermediate space and its location in the claimed structure is unclear and confusing.

2. Claims 1-9 appear to be allowable except for the provisional double patenting rejection above. MPEP 804 I.B. provides:

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

The copending application above, Application No. 10/054,116, has previously been allowed, although it has not yet issued. As that application as been allowed, as set forth in the MPEP, the provisional double patenting rejection is being maintained in this application until the Application No. 10/154,116 issues as a patent, in which case the rejection will be converted into a double patenting rejection. It is noted that a proper terminal disclaimer file din this case will overcome the double patenting rejection.

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2059. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger 23 July 2004

> Richard A. Rosenberger Primary Examiner